

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VERNON WAYNE MCNEAL,

No. 2:05-cv-0441-GEB-EFB P

Plaintiff,

V.

EVERT, et al.,

ORDER SETTING SETTLEMENT CONFERENCE

Defendants.

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. The court has determined that this case will benefit from a settlement conference. Therefore, this case will be referred to Magistrate Judge Stanley A. Boone to conduct a settlement conference at the U. S. District Court, 2500 Tulare Street, Fresno, California 93721 in Courtroom #9 on November 8, 2017 at 9:30 a.m.

A separate order and writ of habeas corpus ad testificandum will issue concurrently with this order.

In accordance with the above, IT IS HEREBY ORDERED that:

1. This case is set for a settlement conference before Magistrate Judge Stanley A. Boone on November 8, 2017, at 9:30 a.m. at the U. S. District Court, 2500 Tulare Street, Fresno, California 93721 in Courtroom #9.
 2. A representative with full and unlimited authority to negotiate and enter into a binding

1 settlement shall attend in person.¹

2 3. Those in attendance must be prepared to discuss the claims, defenses and damages.

3 The failure of any counsel, party or authorized person subject to this order to appear in
4 person may result in the imposition of sanctions. In addition, the conference will not
5 proceed and will be reset to another date.

6 4. Each party shall provide a confidential settlement statement to the following email
7 address: saborders@caed.uscourts.gov. Plaintiff shall mail his confidential settlement
8 statement Attn: Magistrate Judge Stanley A. Boone, USDC CAED, 2500 Tulare
9 Street, Fresno, California 93721. The envelope shall be marked "Confidential
10 Settlement Statement". Settlement statements shall arrive no later than November 1,
11 2017. Parties shall also file a Notice of Submission of Confidential Settlement
12 Conference Statement (See Local Rule 270(d)).

13
14 Settlement statements **should not be filed** with the Clerk of the Court **nor served on**
15 **any other party**. Settlement statements shall be clearly marked "confidential" with
16 the date and time of the settlement conference indicated prominently thereon.

17
18 The confidential settlement statement shall be **no longer than five pages** in length,
19 typed or neatly printed, and include the following:

20 a. A brief statement of the facts of the case.

21 ¹ While the exercise of its authority is subject to abuse of discretion review, "the district court has the authority to
22 order parties, including the federal government, to participate in mandatory settlement conferences...." United States
23 v. United States District Court for the Northern Mariana Islands, 694 F.3d 1051, 1053, 1057, 1059 (9th Cir.
24 2012)(“the district court has broad authority to compel participation in mandatory settlement conference[s].”). The
25 term “full authority to settle” means that the individuals attending the mediation conference must be authorized to
26 fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties. G.
27 Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989), cited with approval in Official
28 Airline Guides, Inc. v. Goss, 6 F.3d 1385, 1396 (9th Cir. 1993). The individual with full authority to settle must also
 have “unfettered discretion and authority” to change the settlement position of the party, if appropriate. Pitman v.
 Brinker Int'l., Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003), amended on recon. in part, Pitman v. Brinker Int'l, Inc.,
 2003 WL 23353478 (D. Ariz. 2003). The purpose behind requiring the attendance of a person with full settlement
 authority is that the parties’ view of the case may be altered during the face to face conference. Pitman, 216 F.R.D.
 at 486. An authorization to settle for a limited dollar amount or sum certain can be found not to comply with the
 requirement of full authority to settle. Nick v. Morgan's Foods, Inc., 270 F.3d 590, 596-97 (8th Cir. 2001).

- b. A brief statement of the claims and defenses, i.e., statutory or other grounds upon which the claims are founded; a forthright evaluation of the parties' likelihood of prevailing on the claims and defenses; and a description of the major issues in dispute.
 - c. An estimate of the cost and time to be expended for further discovery, pretrial, and trial.
 - d. The party's position on settlement, including present demands and offers and a history of past settlement discussions, offers, and demands.
 - e. A brief statement of each party's expectations and goals for the settlement conference, including how much a party is willing to accept and/or willing to pay.

Dated: October 19, 2017

Garland E. Burrell, Jr.
GARLAND E. BURRELL, JR.
Senior United States District Judge